
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WPGS, Inc.)	File No. EB-02-TP-242
Owner of Antenna Structure Registration)	NAL/Acct. No.: 200232700018
Number 1055007 in Mims, Florida)	FRN: 0003-7757-23
Titusville, Florida)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 17, 2002

By the Enforcement Bureau, Tampa Office:

I. Introduction

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that WPGS, Inc., owner of antenna structure registration number 1055007 in Mims, Florida, willfully and repeatedly violated Section 17.51 of the Commission’s Rules (“Rules”)¹ by failing to exhibit tower lights from sunset to sunrise. We conclude that WPGS, Inc. is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. Background

2. On April 23, 2002, agents from the Commission’s Tampa Field Office (“Tampa Office”) investigated a report of a tower light outage in Mims, Florida. The agents observed that antenna structure 1055007, owned by WPGS, Inc., located at 4220 Golden Shores Blvd. in Mims, Florida, was not illuminated per its assigned painting and lighting specifications. The top beacon was extinguished on the antenna structure between local sunset and sunrise.

3. On April 25, 2002, agents from the Tampa Office re-inspected antenna structure, 1055007, in Mims, Florida. The top beacon was still extinguished at that time. The agents interviewed the Chief Operator of AM broadcast station WPGS² who stated that he was aware of the light outage a “couple of days” before, but he did not log the outage nor did he contact the FAA.³

4. On May 13, 2002, the Tampa Office received a letter from the owner of the property at 4220 Golden Shore Blvd. advising that the top beacon had been extinguished on antenna structure 1055007 for over two months. The property owner stated that he had contacted the station engineer for radio station WPGS the day after he noticed the outage.

¹ 47 C.F.R. § 17.51.

² WPGS, Inc. is licensee of radio station WPGS (AM) as well as owner of the antenna structure used by the radio station.

³ Antenna structure owners must notify the FAA of any observed or otherwise known extinguishment of any top steady burning light or any flashing obstruction light not corrected within 30 minutes, *see* 47 C.F.R. § 17.48(a), and must maintain a record of such information, *see* 47 C.F.R. § 17.49.

Federal Communications Commission

III. Discussion

5. Section 17.51 of the Rules requires tower lighting be exhibited from sunset to sunrise. WPGS, Inc. failed to exhibit the required lights on the WPGS tower from at least April 23 to April 25, 2002.

6. Based on the evidence before us, we find that WPGS, Inc. repeatedly⁴ and willfully⁵ violated Section 17.51 of the Rules by failing to exhibit required obstruction lighting on its antenna structure between sunset and sunrise.

7. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for the violation cited in this Notice is \$10,000.⁶ Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), requires us to take into account “...the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁷ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. Ordering Clauses

8. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ WPGS, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$10,000 for willful and repeated violation of Section 17.51 of the Commission’s Rules.

9. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release of this *NAL*, WPGS, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by a check, or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must note the FRN and *NAL*/Acct. No. referenced in the letterhead above.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and must include the FRN and *NAL*/Acct. No. referenced in the letterhead above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of

⁴ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

Federal Communications Commission

inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.¹⁰

14. **IT IS FURTHER ORDERED THAT** a copy of this notice shall be sent by regular mail and Certified Mail, Return Receipt Requested, to WPGS, Inc. 805 North Dixie Ave., Titusville, FL 32796.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director

¹⁰ See 47 C.F.R. § 1.1914.